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ACTION SA-00

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SECDEF WASHDC  
NSC WASHDC  
CDR USPACOM HONOLULU HI  
DEPT OF ENERGY WASHDC  
DEPT OF TREASURY WASHDC  
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SIPDIS

E.O. 12958: DECL: 07/29/2015  
TAGS: [PGOV](#) [PBTS](#) [PINS](#) [SMIG](#) [PREL](#) [BD](#) [IN](#)  
SUBJECT: INDIAN SUPREME COURT DEFENDS ASSAM AGAINST  
"BANGLADESHI AGGRESSION"

REF: A. NEW DELHI 4330

[1](#)B. NEW DELHI 5318

Classified By: PolCouns Geoffrey Pyatt, for Reasons 1.4 (B, D)

[1](#)1. (C) Summary: Amidst continuing anguish over the growing number of illegal Bangladeshi immigrants in India, the Supreme Court on July 13 repealed the Illegal Migrants (Determination by Tribunals) (IMDT) Act in Assam, marking a victory for the BJP and Asom Gana Parishad (AGP) and paving the way for more liberal deportation procedures. Many Indians have grown weary of continued Bangladeshi migration to the Northeast region, and attribute migrants to changing demographics, a rise in crime, a drop in wages, and possible connections to terrorists. Assam has borne the brunt of this migration. The Congress government, which passed the IMDT Act in 1983, has been accused of catering to mostly-Muslim Bangladeshi migrants in order to use them as a vote bank, and of allowing "demographic aggression" in Assam. The total lack of political will by the Congress-led government, as well as logistical obstacles to implementation will likely blunt any surge in deportations, but the repeal will nonetheless intensify communal politics in Assam and hurt the Congress party's electoral prospects ahead of spring 2006 elections there. FM Natwar Singh's August 6 trip to Dhaka will provide an opportunity to discuss migration issues and temper any negative effects of the repeal on Indo-Bangla relations. End Summary.

IMDT: A Clever Sham to Build a Voting Block

[1](#)2. (U) A Congress Party government passed the IMDT Act in 1983 at the height of an anti-foreigner (read: Bangladeshi) uprising spearheaded by the All Assam Student's Union (AASU) in response to the growing number of Bangladeshi refugees in Assam. The new law supplanted the Foreigner's Act, which still governs the rest of the country, and was intended to assuage the anti-immigrant groups by setting up a judicial mechanism in the form of tribunals to determine the nationality of a suspect. In practice, it made deportations more difficult by moving the burden of proof of nationality

from the suspect (as under the Foreigner's Act) to the accuser, i.e., in most cases, the government, but also private citizens and entities. The Congress government used the act to pay lip service to expulsions for electoral gain while allowing illegal immigration to continue unabated.

13. (SBU) As a result, the IMDT Act became widely viewed by ethnic Assamese, their parties, and the national BJP party as a hurdle to identifying and deporting illegal Bangladeshi migrants in Assam. Largely-Hindu opposition parties such as the AGP and the BJP deemed the law "migrant friendly" and accused the Congress of shoring up its vote base by giving Muslim Bangladeshis the right to vote. As the AGP, All-Assam Students' Union (AASU) and BJP began to agitate against the ineffective and duplicitously-named law, Congress defended it on the ground that it helped prevent genuine citizens from being harassed. After former ASSU President and AGP MP Sarbananda Sonowal registered a Public Interest Litigation (PIL) against the bill in 2000 and the NDA government introduced a bill in Parliament to repeal the act in May 2003, the Supreme Court struck it down on July 12, 2005.

Court: IMDT was Ineffective and Unconstitutional  
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14. (U) In its 114 page judgment, the Supreme Court ruled

that the IMDT's lengthy and complicated deportation policies were not adequate to protect the state and its residents from illegal immigrants. Accusing the GOI of failing in its "duty to take all measures for (Assam's) protection as enjoined in Article 355 (of the Indian Constitution)," the court said that "Assam is facing external aggression and internal disturbance on account of large-scale illegal immigration of Bangladeshi nationals." As a result, life in Assam is "wholly insecure and the panic generated thereby created a fear of psychosis." The verdict blamed the IMDT Act for "coming to the advantage of illegal migrants, as any proceedings initiated against them ends in their favor and enables them to have a document having official sanctity to the effect that they are not illegal migrants."

15. (U) Since the IMDT was passed in 1983, deportations in Assam have reportedly decreased considerably compared to neighboring states. The "Economic Times" reported that 300,000 people were deported from Assam between 1962 and 1984. During the first twenty years of the IMDT Act, only about 1500 illegal migrants were deported from Assam. By comparison, under the Foreigner's Act in West Bengal, 489,046 people were deported from 1983 to 1998. A "Times of India" story reported that the Muslim population of Assam witnessed a 77 percent growth between 1971-1991, while Hindu growth registered a 41 percent increase. (Note: Immigration numbers are difficult to find and often exaggerated to support opposition claims. An Institute of Peace and Conflict Studies article claimed that the latest census figures actually show that the overall growth rate in Assam between 1991 and 2001 was only 18 percent, which is three percent less than the national average. End Note.)

Put the Blame on Vote-bank Politics  
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16. (C) Anti-immigration groups have accused Congress of producing a demographic change in the Northeast by illegally giving status and voting rights to minorities. In a recent editorial, BJP MP Balbir Punj reports that the 2001 census showed that Muslims have become or are near to a majority population in ten out of 23 districts. An Institute for Conflict Management study by Wasbir Hussain points out that Muslim voters are a deciding factor in almost half of Assam's 126 State Assembly constituencies. Suhas Chakma of the Asian Center for Human Rights explained that the perceived increase in Muslim voters has led to communal discord, and as a result, most Congress opposition groups run almost entirely on anti-immigration platforms.

17. (C) Although Congress publicly supported the IMDT Act, Kirip Chaliha, an MP of the party from Assam, told Poloff that the repeal has been met with a "majority sense of relief." Acknowledging that the act "put the government and all of its apparatus in favor of the migrants," he said the repeal was important to the people of Assam as a "signal that the government will not legitimize the presence of Bangladeshi migrants." Although Congress must publicly oppose the repeal, Chaliha agreed privately that the act was a detriment to security and that the government "can-not be blind on infiltration." Despite the public pressure on Congress to fight against the repeal and introduce further legislation ahead of state elections in 2006, Chaliha told Poloff that the party will privately not oppose the decision. Congress Chief Minister of Assam Tarun Gogoi said that he would create an alternative law, but Assam's UPA Cabinet has settled for creating a Group of Ministers to review the repeal and "come up with an appropriate response."

## BJP Sees National Advantage in Backwoods Politics

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18. (C) A perception among Muslims that Congress failed to protect them may hurt the party's electoral chances and give a boost to opposition BJP and AGP parties in Assam. Political Counselor for the Bangladesh High Commission Mashfee Binte Shams worried that an apparent split in the AGP and a weak BJP base will cause opposition parties to increase agitation against suspected migrants, most of whom are Muslim. Suhas Chakma noted that the repeal would initially help the opposition parties, but predicted this court victory would take the steam out of their anti-immigrant campaigns and actually hurt their support in the long run. Emboldened by the court victory, the BJP brought the Congress's "abysmal failure to protect the eastern borders against illegal immigration" to the national spotlight by filing a motion in Parliament on July 26 to discuss the issue on a national stage. If the debate in Parliament resonates well, the illegal immigration may play a larger role in BJP national platforms.

## Don't Expect the Assam Congress to Ramp Up Deportation

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19. (C) The repeal of the IMDT Act has simplified the process of removing illegal migrants, but the lack of political will in Congress-led Assam and obstacles to implementation will likely prevent a big rise in the number of deportations. Assam MP Chaliha emphasized that Muslims would not really suffer from the repeal as long as Congress was in power because there is no political will under the ruling government to mobilize the police, courts and politicians to find and deport illegal migrants. Even if the AGP or BJP come to power in the upcoming elections, Smruti Pattanaik from the Institute of Defense Studies and Analyses (IDSA) pointed out that proving that an Assamese resident is illegally present is extremely difficult because Bangladeshis can easily obtain ration cards and have their names added to the voter's lists, which are two primary ways of proving Indian citizenship. If the migrant is found guilty under the Foreigner's Act, Shillong-based Hasina Kharbhih explained that there is no effective system for deportation and guards at the Bangladesh border usually refuse to re-admit the "foreigner" without proof of citizenship. As a result, Asian Center for Human Rights president Chakma predicted that most deported immigrants disappear into another state in the Northeast rather than returning to Bangladesh. He said that migrants were only effectively deported when they were caught along the border and could be immediately returned, which is reflected in the higher numbers of Bangladeshis deported from along the border of West Bengal.

## Bangladeshi Reaction: Not our Problem, but India's

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10. (C) Coming at a time of increased Indo-Bangla engagement (Ref B), the repeal threatens to increase tension along the border (Ref QhJU&B6Ax